Supreme Court, U.S.
FILED

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No.

In The
Supreme Court of the United States

October Term, 1998

NANCY JOHNSTON - Petitioner

V.

STATE OF NEW JERSEY - Respondents
City of Cape May

On Petition for Writ Of Certiori
To The Superior Court Of New Jersey Appellate Division

PETITION FOR WRIT OF CERTIORARI

Nancy Johnston
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21pp

QUESTIONS PRESENTED

Whether a municipality can bring an unsubstantiated and ambiguous zoning complaint against an established business, not notify said business of its appeal rights, deny said business a request for an appeal hearing when made verbally when business owner attended a city council meeting public portion, and then deny/revoke said business's mercantile license. Can the municipality then proceed to prosecute said business in its municipal court for "operating a business without a mercantile license".

TABLE OF CONTENTS

Questions Presented..... i
Table of Contents.....ii
Table of Citations iii
Opinions Below 1
Statement of Jurisdiction 1
Statute Involved 1
Statement of the case 1
Reasons for granting the Writ 2
Conclusion 4

APPENDIX

A, New Jersey Superior Court Appellate Division Opinion 1a

B, Denial for Rehearing, New Jersey Supreme Court 3a

C, Cape May Municipal Court Decision 3a

Letter denying Mercantile License.....5a

Cape May City Council minutes, May 21,1996....6a

Letter appealing denial/revocation of mercantile license 6a

Cape May City Attorney, Fineberg letter 7a

Findings and Conclusions, Cape May City Planning Board 9a

Mercantile License 14a

TABLE OF CITATIONS

STAUB v BAXLEY, 355 US 313, 78 S. Ct. 277, 2 L Ed. 302

SHUTTLESWORTH v BIRMINGHAM, 394 US 147,
89 S. Ct. 935, 22 L Ed. 2d 162

HOUSE OF TOBACCO Inc. v CALVERT, 394 SW 2d 165

FRANCISCO v BOARD OF MEDICAL EXAMINERS,
149 SW 2d 619

MURPHY v MITTELSTATD 1946, Tex Civ App,
195 SW 2d 165, 56 ALR 2d 896

LODER v DEPT. OF HEALTH, 189 NY 187, 82 NE 187

CARROLL v CALIFORNIA HORSE RACING BOARD,
16 Cal 2d 164, 105 P 2d 110

SORENSEN v JACOBSON, 26 ALR 2d1186

COUMAS v TRANSCONTINENTAL GARAGE,
41 ALR 2d 539, 68 Who 99

TILBERG v KEARNEY TP,
103 NJ Super 324, 247 A. 2d 161, (L. 1968)

APPLICATION of MEADOWLAND v COMM. SYSTEM Inc.,
175 NJ Super 53, 417 A 2d 575

DRIVE TO DEPT. STORE V CITY OF NEWARK,
115 NJ Eq. 222, 170 A 29 (1934)

Nancy Johnston respectfully petitions for a writ of certiorari to review the judgment of the New Jersey Superior Court Appellate Division.

OPINIONS BELOW

The decision of the New Jersey Superior Court Appellate Division was rendered on June 15, 1998. Petitioner's timely filed Petition for Rehearing was denied by order dated November 5, 1998. Petitioner Nancy Johnston was sentenced by the Cape May Municipal Court January 14, 1997. These decisions are reproduced as Appendices A, B, and C.

STATEMENT OF JURISDICTION

The jurisdiction of this court is invoked pursuant to 28 USC 1257. The petition has been filed within 90 days of November 5, 1998, the date on which the Supreme Court of New Jersey denied petitioner's timely filed Petition for Rehearing.

STATUTE INVOLVED

Cape May Ordinance 7-2.1 Licensed Required. No person shall engage in or carry on any business or trade in the city or use any vehicle, stand, store or other place or thing or sell or offer for sale any goods or chattels unless a mercantile license has first been obtained from the city clerk.

STATEMENT OF THE CASE

This case arises from the municipal court prosecution of petitioner Nancy Johnston for "operating a business without a license" in violation of City of Cape May Ordinance 7-2.1..

Petitioner NANCY JOHNSTON has operated a licensed restaurant in the city of Cape May since 1970. On July 17, 1996, Johnston received a certified letter from the city denying her annual mercantile license citing zoning noncompliance. Consequently Johnston was summoned, tried, and convicted in municipal court for operating a

business without a mercantile license and ordered to pay $17,000. in fines plus $75. in court cost. In her defense Johnston stated that mercantile license was denied/revoked for unsubstantiated and disputed reasons, was denied/revoked without due process, without a notification of due process rights, and when Johnston inquired about a due process procedure was ignored. In entering His verdict, Honorable P. Martin Way J.M.C. stated that "the issue was limited to the operation of a business without a mercantile license" (pg.3a) and found Johnston guilty on December 17, 1996. On January 14, 1997, Judge Way sentenced Johnston to pay $17,000. in fines plus $75. in court cost.

On January 21, 1997, Johnston sought de novo review of that conviction in the Criminal Law Division of Superior Court. On May 16, 1997, Superior Court, Criminal Law Division heard the matter and found Johnston guilty of the ordinance and imposed the same monetary fine imposed by the municipal court.

On October 17, 1997, Johnston filed an appeal with the Superior Court of New Jersey Appellate Division. On May 28, 1998, Appellate Division heard the matter. On June 15,1998, Appellate Division affirmed the opinion of the lower court and stated that "defendant did not attempt to appeal the denial by action in the Superior Court in lieu of prerogative writ or through utilization of any available local appellate process" (pg.2a).

On September 10, 1998, Johnston petitioned the Supreme Court of New Jersey for Certification. On November 5, 1998, Supreme Court of New Jersey denied petition with full cost.

REASONS FOR GRANTING THE WRIT

This case reflects and exacerbates a clear division and conflict among the States and Federal Courts concerning the application of due process protection granted under the 5th and 14th Amendments when denying or revoking an established license.

A license to practice a profession, trade, occupation, or to conduct business confers valuable rights which cannot be revoked or denied without complying with statutory procedural requirements and giving the licensee notice of such a hearing as will satisfy the requirements of due process of law, either before a court or before an authorized administrative body.

The New Jersey Superior Court Appellate Division erred in their failure to consider Johnston's argument for the following:

(1) The specific reason stated for the denied/revoked mercantile license "Does Not Comply: Zoning" was unsubstantiated and ambiguous. Specific findings of zoning noncompliance were never legally established and basically not true. Notification of denial/revocation did not contain any instructions for a appeal procedure (5a).

(2) Johnston was entitled to a due process hearing as to the allegation of zoning noncompliance prior to the issuing of the criminal charge of "operating a business without a mercantile license". Johnston was entitled to be notified of her right to such a hearing.

(3) Johnston was denied a due process hearing when prior to the criminal charge, Johnston attended a city council meeting public portion to discuss his/her concerns whereas Johnston was denied the opportunity to speak by the mayor (pg.6a).

(4) After the receipt of mercantile license denial/revocation notice Johnston made a request in writing for an appeal hearing. This request was denied by the city attorney based on the reason that the time frame for an appeal has expired (6a).

(5) City Council based a condition for the return of the mercantile license on a relinquishment and complete refund of a property tax credit given on the Johnston's business property. Such action being tantamount to extortion (7a).

Certification should be granted because it presents a question of general public importance. Can a municipality bring an unsubstantiated and ambiguous zoning complaint against an established licensed business and not allow for a reasonable amount of time to address and/or resolve problem with the proper authority (in this case the Cape May City Planning Board). Can the city rush its municipal court criminal action when the business is actively engaged in the process of receiving a resolution with the proper authority. Indeed a final resolution was granted by the Cape May city planning board making irrelevant all concerns of the zoning noncompliance complaint (9a,14a). This was in essence my due process but it happened after my conviction and fine of $17,000.

Can the city not be forthcoming of its specific requirements for a due process hearing, leaving the accused ignorant of its ability to defend itself and giving the city the advantage of a swift and easy prosecution.

Is it reasonable to expect a small business owner to possess legal knowledge beyond the scope of the common man or women in order to meet the State's requirement for a due process hearing.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Nancy D. Johnston

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Appendix A

Filing date June 15, 1998
Appellate Division

Superior Court of New Jersey
Appellate Division
A-6379-96T2

State of New Jersey,
Plaintiff-Respondent,
v.
Nancy Johnston,
Defendant-Appellant.

Argued May 28, 1998 - Decided June 15, 1998
Before Judges D'Annunzio and Coburn
On appeal from the Superior Court of New Jersey,
Law Division, Cape May County.
Edward Johnston argued the cause for appellant
(Mr. Johnston on the brief).
Frank L. Corrado argued the cause for respondent
(Mr. Corrado, on the brief).

PER CURIAM

Defendant appeals from a Law Division judgment, entered after a trial de novo on the record, convicting her of operating her restaurant in Cape May, New Jersey without a mercantile license required by Cape May ordinance. Each licensing year begins on July 1, The court determined that defendant had operated her restaurant for eighty-five days without a license and imposed a fine of $200. per day, for a total of $17,000.[1]. The restaurant received revenue during the eighty-five days of illegal operation.

Defendant's application for a license, filed at the last minute on June 27, 1996, was denied because of defendant's "zoning violations". this was not, however, the result of a simple misunderstanding. The record would support a finding that defendant and her agents, her family members, treated the municipality's land use regulations with disdain. The record would also support a finding that the license denial was a culmination of efforts by the municipality, which began at least as early as 1991, to bring defendant into compliance with the land use ordinances. By letter

---

[1]The ordinance provides that "the maximum penalty....shall be a fine not exceeding Five Hundred ($500.00) Dollars or imprisonment for a period not exceeding ninety (90) days, or both. Each day that the violation.....exist shall be deemed a separate offense"

dated May 8, 1996, Cape May's lawyer wrote to defendant's lawyer summarizing the existing problems and conveying the following warning:

> Your clients currently are operating without a mercantile license. Although the city has in the past accepted a mercantile license fee but has not issued a permit because of these many violations, the City has permitted your clients to operate. Please note that the city will not permit any operation beyond June 30, 1996 without your clients being in possession of a mercantile license, which means that all of the pre-requisites for zoning, construction, and board approvals must have been obtained.

The record also establishes that after the denial of defendant's license application, defendant did not attempt to appeal the denial by action in their Superior Court in lieu of prerogative writ or through utilization of any available local appellate process. Instead, defendant continued her intransigence and continued to operate her restaurant without a license.

On appeal, defendant makes the following contentions:

ARGUMENT #1

> Superior Court Judge erred in his analysis of the case whereupon he relied on erroneous specific findings of facts with regard to the zoning violations of the paving of the front parking area.

ARGUMENT #2

> The Superior Court Judge erred in this case when he failed to consider the catch 22 dilemma the appellant was put into by the Cape May Planning Board subcommittee and the Cape May City council members which caused considerable delay in resolving this issue.

ARGUMENT #3

> The Superior Court Judge erred in his failure to consider appellants arguments concerning violations of their due process.

ARGUMENT #4

> The Municipal Court Judge and the Superior Court Judge erred in their decision to fine appellant $17,000. for operating a business without a license when in fact the license was revoked without due process and the fine was levied without a proper economic analysis.

We have carefully reviewed the record and, in light of applicable law, we conclude that these contentions are without merit. Re. 2:11-3(e) (1) (A) and (E). Affirmed.

Appendix B

Supreme Court of New Jersey
C-365 September Term 1998
46,499

State of New Jersey
City of Cape May,
Plaintiff-Respondent
v.
Nancy Johnston
Defendant-Petitioner.

On petition for Certification
Filed November 5, 1998

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-6379-96 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with cost.

WITNESS, the Honorable Deborah T. Ports, Chief Justice, at Trenton, this 2nd day of November, 1998.

CLERK OF THE SUPREME COURT

"s/_____"

Appendix C

Cape May Municipal
Court Findings: December 17, 1996

The Court: Okay. I've heard the testimony. I'll proceed to make findings at this time. While there were – there has been much testimony over a number of days and many exhibits introduced into evidence, the issues are relatively limited in that the defendants are charged with operating the restaurant without a mercantile license for the stated period under the summonses on file. And it appears that the basis for the non-issuance for zoning violations, which there are many – again, many issues of planning and zoning nature, but it does appear clear and basically not in dispute that there were at least some zoning violations that existed for a number of years that were

clear violations in the opinion of the Court. And although there are other issues beyond that are subject to dispute, these do appear to be reasonably undisputed and clear in the --- it's also clear that the license was denied for these reasons. The defendants were on notice of the denial. Not withstanding that, chose to operate the business for the stated reasons of making money over the summer season. And based upon all the evidence and testimony in the record, I find that the defendants are guilty of operating a restaurant without having obtained a mercantile license and that the mercantile license was properly and reasonably denied and the remedy would have been at that point -- and years ago perhaps -- to either abate the alleged violations or appeal to through the normal channels provided for such a matter. I think there are some limitations on the Court substituting its decision -- any decision for the planning and zoning and municipal functions and making the collateral attack totally on -- in that regard, but I do find within the issues that are brought before the Court that there was a violation. So, a finding of guilty is entered as to all charges. Now as to sentencing, you say the position of the City is that you're in agreement with a postponement, Mr. Prosecutor.

Cape May Municipal
Court Sentencing: January 14, 1997

The Court: Okay. Well, it does appear to the Court that, as referred to in the findings, that this was a clear and substantial violation. It's -- in particular, the Court notes that the defendant has indicated that -- through testimony that they knew there was a mercantile violation and, nevertheless, elected to operate their business through the summer for economic reasons. The Court's concern is that this can't simply be a nominal fine, otherwise it would -- the ordinances could be routinely disregarded for more or less the cost of doing business so to speak and that a significant fine has to be imposed. Not only as a deterrent in this matter, but for all the other parties that are operating under the local ordinance codes and if there were -- if these were not enforced appropriately, then there would be a breakdown of -- or could be at least -- a breakdown of the entire orderly structure of regulating business. So, we'll accept the recommendation and impose a fine of $200.00 per day, together with court cost of $25.00 for the 85 day period. That's the findings and sentence to which there's a right to an appeal. Any appeal must be filed within 20 days. In which case, the Superior Court will be able to review and reconsider the findings and sentence.

Thomas M. Phelan
mayor
William G. Gaffney
Council President
John Bailey
Councilman
Robert W. Elwell, Jr.
Councilman
Dr. Edward J. Mahaney, Jr.
Councilman

City of Cape May
City Hall - 643 Washington St.
Cape May, N.J. 08204-2397
(609) 884-9525 * Fax 884-9581

Virginia E. Peterson
City clerk
884-9530
Fax: 8848589

July 11, 1996

COVE RESTAURANT
Nancy Johnston
405 Beach Avenue
Cape May, NJ 08204

Sent by regular mail and
Certified mail - Z 275334558

Re: Cove Restaurant
405 Beach Ave.
Block: 1092 Lot: 13

Your application for a 1996-1997 General Business (Mercantile) License has not been approved in whole or in part for the following reason(s) as noted below:

REASON(S) FOR THE APPLICATION DENIAL

1._____Application Incomplete
2._____Application Fee Insufficient - AMOUNT DUE_____
3._____ Delinquent Property Taxes or Assessments

DOES NOT COMPLY

4.XXXXXX Zoning
5._____ Construction
6._____ Fire
7._____ Health
8._____Housing
9._____ Other

The license application received 07/01/96 for the licensing year beginning 07/01/96 has not been approved due to continued Cape May City zoning violations. Enclosed is your Mercantile License application and a refund check in the amount of $692.00.

Please contact the Construction/Zoning Office at 884-9555 for additional information.

Please be advised that if your application was not approved, even though the required fees were submitted, your are not entitled to engage in the business for which you have made application, until approval is granted.

Cape May Official Minutes Dated -- May 21, 1996

Public Portion

Paul Johnston, COVE RESTAURANT, asked to discuss the sand pile by his property. Mayor Mahaney advised Mr. Johnston that the matter is pending is pending litigation and could not be discussed in public session.

City of Cape May
office of City Clerk
643 Washington St.
Cape May, NJ 08204

10/25/96
Paul Johnston
Cove Restaurant
405 S. Beach Ave.
Cape May, NJ, 08204

City Clerk:

I would like to appeal the decision to deny our Mercantile License. I hereby request an Administrative Hearing to discuss a way of resolving this issue. Your reply to this matter would be greatly appreciated.

"s/_____"
Paul Johnston

P.S. I just became aware of a procedural appeal process that handles such matters.

cc: Robert Fineberg
Thomas Phelan

LAW OFFICES
ROBERT A. FINEBERG, P.C.
A PROFESSIONAL CORPORATION
208 N. MAIN STREET
CAPE MAY COURT HOUSE, NJ 08210

Robert A. Fineberg
H. Parker Smith

(609) 463-0055
FAX (609) 463-0303

May 8, 1996

Louis C. Dwyer, Jr., Esquire
Corino & Dwyer
9700 Pacific Ave., Suite 101
P.O. Box 849
Wildwood, N.J. 08260

Re: Cove Restaurant

Dear Lou:

The City Council met on May 6, 1996, to discuss this matter. The City's position, which you can consider to be firm, with regard to the various issues that are involved is as follows:

Tax Credit: As you know, your clients have been enjoying a 10% tax reduction on the assessed valuation of the land portion of their property for last several years due to the building restriction which was retained by the City by easement on Lot 14. Nevertheless, since 1976, your clients have utilized lot 14, first by way of construction of an exterior deck and then since approximately 1989 through the enclosure of that deck to effectively expand the operation of their restaurant. The City therefor, is entitled to a refund, together with interest, of that tax credit. The Council discussed your proposal of reducing that refund to the proportion by which the deck utilizes the land area of Lot 14 (approximately 24%). The Council is not in agreement with your rationale. The credit was extended to reflect the fact that this lot effectively was rendered useless because of the easement. Your clients use of this property negates the reason for that tax deduction, and there is no rational connection between the square footage of use of that lot and that tax credit. Your clients have, in fact, had the beneficial use of this lot and, therefore, should not be receiving any portion of that credit.

Enclosure of Porch Area Through Erection of Walls and Installation of Windows: As you know, a permit was issued in 1976 for the construction of a deck, and a additional permit in 1984 issued

for the construction of a roof. Clearly, the issuance of those permits was in error, probably because the Construction Office was not aware of the easement retained by the City and prohibition against construction. More recently, your clients have erected the walls and installed permanent windows. this was done without the issuance of a permit and in violation of State Construction Code, as well as various local ordinances. The City Council cannot accept this further, extension of an illegal use, and the walls and windows must be removed.

Other Zoning Violations: Your Clients have erected signs which violate the City's zoning ordinances, have paved their lot without obtaining a permit, have expanded the crushed stone parking lot beyond their property line into the S2/PW Dune Stabilization District, have expanded their seating, and have done this without a site plan or other board approvals.

Mercantile License: Your clients presently are operating without a mercantile license. although the City has in the past accepted a mercantile license fee but has not issued a permit because of these many violations, the City has permitted your clients to operate. Please note that the city will not permit any operation beyond June 30, 1996, without your clients being in possession of a mercantile license, which means that all of the pre-requisites for zoning, construction, and board approvals must have been obtained.

By copy of this letter to John Queenen, City Code Enforcement Officer, I am conveying the City Council's direction to prosecute summonses previously issued. Continued violations will result in additional summonses.

By copy of this letter to Linda Rey, Tax Assessor, the City Council is directing that the current tax reduction be immediately terminated and that a proper assessment of the current use by your clients of their property be made. this assessment does not constitute the condoning of any illegal use by your clients of their property, or a waiver of any of the City's rights.

Very truly yours,

"s/_____"
Robert A. Fineberg

cc Virginia E. Peterson, City Clerk
Linda L. Rye, Tax Assessor
John Queenen, Code Enforcement Officer
Jim James, Construction Official

Findings and Conclusions of the Cape May City Planning Board
Resolution # 6-497:1

Whereas, Nancy Johnston and Mary Costello, of 405 Beach Ave, Cape May, New Jersey, originally applied to the Cape May City Planning Board on April 19,1994 and, whereas thereafter the application was amended by the applicants and Louis C. Dwyer, Jr., Esquire, their attorney, all of which correspondence is filed with the Board and made a part hereof by this reference . has now applied to the Cape May City Planning Board, having abandoned a request for a second floor addition on the premises, thus seeking to obtain approval for existing conditions and to make reasonable improvements to the site in accordance with a recommendation of this boards professionals which is embodied in a letter of Louis C. Dwyer, Jr., Esquire, to this Board dated: December 24, 1996 which is included by this reference as if set forth at length, as per the plans of Van Note-Harvey Associates originally dated April 14, 1994 and revised thru December, 3, 1996, the architectural plans of Louis A. Digregorio dated April 8, 1994 an the site plan review application of the applicant dated April 15, 1996 for the premises which is in the C-three zone; and the matter having been reviewed repeatedly by this board at work sessions as well as by the board professionals; and

Whereas, this application was heard by the Board in two meetings: the first on March 5, 1997 and the second on June 4, 1997; and

Whereas, the Board at both hearings carefully considered the applications submitted by the applicants as well as the arguments of the applicants' attorney, Louis C. Dwyer, Jr., Esquire and, heard the testimony of Bruce M. Graham of Van Note-Harvey Associates, Edward Johnston and Paul Johnston both sons of Nancy Johnston, testifying on behalf of the application, and also carefully considered the evidence presented by the Applicants, the adjoining property owners and the general public and heard the following:

A. The property is owned by Nancy Johnston and Mary Costello which has standing to bring this application.
B. The following comment letters to this board are included herein by this reference as if set forth by length:

1. Letter of Irma Canning, City Zoning Officer, dated: August 3, 1995, august 1, 1996, and December 19, 1996.
2. letters of James A. Mott, Killiam Associates, Board Engineer, dated June 18, 1993, April 25, 1994, August 8, 1995, September 5, 1996, December, 20, 1996, March 4, 1997.
3. Letters of Thomas Scangararllo, City Planner, dated: May

20, 1994, June 24, 1994, August 28, 1995, September 6, 1996, and December 23, 1996.

C. At the meeting of March 5, 1997 Mr. Dwyer presented the Application and gave the background of the premises indicating that it is an existing restaurant with a second use for part of the premises as a parking lot. He indicated that the original application included a second floor addition for a restaurant apartment and storage area but that request has been eliminated; and the Applicants are before the Board to resolve pending issues that now exist at the scene, indicating that they were seeking site plan approval for same which are shown on the modified site plan. He also represented to the Board that there were negotiations with the City of Cape May in regard to an easement to maintain the jetties over which a portion of the deck was built. He represented there was a tentative settlement which had not been finalized with the City. He also indicated that was an issue in regard to the removable in this area and, the Applicants sought the approval to maintain the removable windows.

D. Bruce M. Graham testified on behalf of the application referring to the plans and, indicating that the currently there is a thirty foot by fifty foot (30 X 50) structure with deck on site which will remain unchanged. He further testified that the changes on the site plan are for twenty-seven (27) parking spaces now delineated, for new lighting for the parking lot, for parking surface which is currently clam shells, for signage, of twenty (20) square feet plus or minus and for shifting the storage shed to the northeast corner of the property and reorienting same. Mr. Graham indicated that he believed variance requirements were present for lot coverage and side yard although both were existing. Edward Johnston, one of the applicants, testified that there were forty (40) seats inside the restaurant and fifty-six (56) on the deck and that there were two Mercantile Licenses: one for the restaurant and one for parking.

E. Mr. Scangarello then went over his letter of December 23, 1996 after which, a number of Board Members indicated there discomfort in hearing this matter while negotiations were still pending with the City of Cape May in regard to the encroachments and, therefor, the matter was tabled, the Applicants waiving any time frame requirements, in order for the Applicants to finalize there agreement with the City and, for a meeting between the City Solicitor, this Board Solicitor, and the Applicants concerning the progress of this matter since this the Matter was also in the Cape May City Municipal Court.

F. The meeting reconvened on June 4,1997 at which time those present and sworn were Mr. Graham, Paul Johnston, Susan Johnston, Edward Johnston, and Nancy Johnston with Mr. Dwyer, again, presenting the Applicants. Mr. Graham recapped what happened on March 5,1997 and testified that this is an existing restaurant in a c-3 district and that the Applicants want to improve the site, there being no changes in the building or use beyond what is there already. he further reiterated that the building is approximately a thirty by fifty foot (30 X 50) with an attached porch or deck. Mr. Dyer reminded the Board that the Applicants were also seeking to validate the removable windows which are in the enclosed porch or deck section of the premises. Mr. Graham went on to indicate that there was a currently a ninety-six (96) seat restaurant use and a beach parking use on the premises and, the Applicants were applying for the following variances for the site:

1. Storage shed to be relocated to the rear corner.
2. Parking space better delineated.
3. Wheel Stops.
4. Handicap parking spaces.
5. Incorporating a new six foot by six foot (6X6) trash enclosure.
6. Incorporating new parking lighting.
7. Providing for additional drainage facilities
8. Requesting maximum available percentage for landscaping that being approximately 7% of the property.
9. Providing for curbing along the building area and the perimeter of the parking lot.
10. Bringing the signage into compliance.
11. Mr. Graham also testified that there are pre-existing conditions for which the applicants might need a variance including the side yard where nine (9) feet is there and ten (10) is required, for lot coverage where 93% exist while 75% is permitted.
12. For the number of signs.
13. For the parking spaces where forty-four (44) are required and twenty-seven are present; and for drive aisle width of 19.9 feet rather than twenty (20) feet required. Mr. Graham also indicated that the Applicant was seeking a waiver for location of loading area and for site triangles. He indicated that further variance relief would be necessary for parking in the front yard setback, which is pre-existing; for the parking surface, which is pre-existing; for three (3) spaces which are in encroachment into the front setback; and for lighting of one (1) foot candle rather than the required 1.5 foot candles.

J. At this point Mark Sray, representing the board Engineer, went over Mr. Mott's letter to the board of March 4, 1997; and Mr.

Scangerello went over his letter of December 23, 1996. there was a question to the Applicant as to how long they have had a mercantile license on which the reply was since 1968. The meeting was then opened to the public within two hundred feet at which time no one responded; and then opened to anyone at which time no one responded. Mr. Dwyer reiterated that the only new items on the premises were the windows on the enclosed porch. He submitted at this time two photographs labeled A-1 and A-2 showing the premises approximately fifteen (15) years ago and, the parking for same. The Chairman asked for a consensus of the Board as to weather they felt there was a need for a lot area variance at which point the Board indicated there was not after which Edward Johnston indicated there had been ninety-six (96) seats in the premises since at least 1986.

K. There was then a motion made by Chief Boyd and seconded by Manella to approve the signage as presented which is .39 square feet over the maximum requirement. Those voting in favor were Mr. Andrus, Mr. Bellangy, Chief Boyd, Councilman Mahaney, Mr. Maher, Ms. Ryan, Mr. Bezaire and Mr. Manella, with Mayor Phelan abstaining. There was then a motion made by Mr. Maher that the parking on the premises may be used for beach parking as well as for restaurant parking, meaning a variance would be granted for twenty-seven (27) spaces on site, total,. Those voting in favor were Mr. Bellangy, Chief Boyd, Mr. Maher, Mr. Manella, and Mr. Bezaire. Those voting in the negative were Mr. Andrus, Councilman Mahaney and Ms. Ryan. Mayor Phelan abstained. There was then a motion made by Mr. Manella that the front parking in the area within the setbacks and the site triangle required a variance. The motion was not seconded.

There was then a motion made by Mr. Maher seconded by Chief Boyd that the Board not require a loading zone. Those voting in favor were Mr. Bellangy, Chief Boyd, Councilman Mahaney, Mr. Maher, Mr. Manella, Ms. Ryan, and Chairman Bezaire with no one voting in the negative and Mayor Phelan abstaining.

There was then a motion made by Chief Boyd seconded by Mr. Andrus that the Board allow one (1) foot candle for parking in the lighting areas rather then the required 1.5 candles. Those voting in favor were Mr. Andrus, Mr. Bellangy, Chief Boyd, Councilman Mahaney, Mr. Maher, Mr. Manella, Mr. Bezaire, with no one voting in the negative and Mayor Phelan abstaining.

The conditions imposed are as follows;

1. All necessary State, County, and Local approvals.
2. The Applicants must post a performance bond in a amount satisfactory to the Planning Board Engineer and, in a form satisfactory to the City Attorney for site improvements and, pay for inspection costs of improvements when installed.

3. The Applicants must notify the Board Engineer at least forty-eight (48) hours in advance of any construction activities.
4. The plan should be amended to show curb detail as concrete class "B".
5. The Applicant shall submit to the Board Attorney for his approval a Deed of Consolidation of Lots 13 and 14 and shall file same with the Clerk of Cape May County showing proof of filing with Board Attorney.
6. The removable windows shall be approved by the City Construction Office and all necessary permit fees for same be paid to the City of Cape May.

Moved by: P. Andrus

Seconded By: B. Boyd

ROLL CALL

Those in Favor: P. Andrus, H. Bellangy, B. Boyd, E. Mahaney, T. Phelan and F. Mannella.

Those Opposed; None

Those Abstaining: None

The foregoing is a true copy of a Resolution adopted by the Cape May City Planning Board on its regular meeting on July 2, 1997, as indicated in the copies of the Minutes of said meeting.

"s/_____" July 21, 1997
Mary Rothwell, Secretary

City of Cape May, New Jersey

643 Washington Street
Cape May, New Jersey 08204

License No: 700059

License Valid To
June 30, 1998

Mercantile License

Statement Date: 07/09/97
Trading as:
COVE RESTAURANT, DRUM INC
405 Beach Avenue
BLQ: 01012 00013

COVE RESTAURANT, DRUM INC
Nancy Johnston
405 Beach Avenue
Cape May, NJ, 08204

Description	Units	Amount
Parking Lot, per space - $75. min.	27.00	$297.00
Restaurant, per seat	96.00	$475.00

Total Fee Paid: $772.00

"s/_____"
Virginia E. Peterson
City Clerk